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November 9, 2016

Via ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket Nos. 16-143, 15-247, 05-25, RM-10593

Dear Ms. Dortch:

On November 7, 2016, Frank Simone, Rich Clarke, Keith Krom and the undersigned, all of AT&T, and Jim Young of Sidley Austin LLP met with Matt DelNero, Deena Shetler, Eric Ralph, Pam Arluk, Shane Taylor, Justin Faulb, William Kehoe, Thom Parisi, Richard Kwiatkowski, Irina Asoskov, Lynne Engledow, and Joseph Price of the Wireline Competition Bureau. We discussed the attached document, which summarizes AT&T's position on certain regulatory outcomes indicated by Chairman Wheeler's recent Fact Sheet on the Business Data Services proceeding.¹

In addition, on November 7, 2016, Joan Marsh of AT&T had a separate telephone conference with Nick Degani, Legal Advisor to Commissioner Ajit Pai, during which Ms. Marsh and Mr. Degani discussed the special access transport issues outlined in the attached document.

Pursuant to section 1.1206 of the Commission's rules, this ex parte notification is being filed electronically for inclusion in the record of the above-referenced proceeding. If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,
/s/ Caroline Van Wie

¹ FCC, Fact Sheet, Chairman Wheeler's Proposal To Promote Fairness, Competition, And Investment In The Business Data Services Market (Oct. 7, 2016) ("Fact Sheet").

Marlene Dortch, Secretary

November 9, 2016

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cc: Matt DelNero
Deena Shetler
Eric Ralph
Pam Arluk
Shane Taylor
Justin Faulb
William Kehoe
Thom Parisi
Richard Kwiatkowski
Irina Asoskov
Lynne Engledow
Joseph Price
Nick Degani

Business Data Services

AT&T

November 2016



All DS1s and DS3 Channel Terminations and Transport Deemed Non-Competitive Nationwide?

It is surprising that the Fact Sheet indicated that *all* DS1 and DS3s nationwide would be deemed non-competitive and indiscriminately brought back within the price cap given findings in FNPRM:

- “[W]e expressly reject the idea that many, if any, BDS markets are national in scope . . .” FNPRM ¶ 216.

Indeed, it is odd to see the Fact Sheet proposal fail to distinguish transport from channel terminations, since the proceeding has been squarely focused on channel termination competition.

- The Commission developed separate tests for channel terminations and transport in the 1999 *Price Flex Order*, finding that LECs treat the services separately and price them differently, which remains true today. The Commission also found that competitors could enter the transport market before they could enter the channel termination market.
- The 2012 *Suspension Order* was based almost entirely on concerns about a possible lack of competition for channel terminations.
- The April *FNPRM* contains very little discussion of transport. Where it does, it acknowledges the significant differences between channel terminations and transport for TDM services. Indeed, Professor Rysman did not separately analyze competition in the transport market:
 - “My approach of aggregating to the level of the circuit rules out separate analysis of the transport market. In this paper, I focus only on the market for circuits provided to customers (sometimes called the channel termination market), although the transport market may also be interesting to study.” FNPRM, Appendix B at 6.



Even CLECs Find The Transport Market Competitive

Thus, CLEC arguments have centered exclusively on competition in the channel termination market.

- In fact, XO “sees considerable competition for transport There are many competitors for transport service in [central business districts] because numerous CLECs frequently are collocated in the offices where XO is located.” XO explained that “it is feasible for XO to combine channel terminations from the ILEC with transport from a competitive provider,” and urged the Commission to “analyze separately” channel terminations and transport.
- Windstream self-supplies “Ethernet network access [*i.e.*, transport],” and explained that “Ethernet network access includes transport over Windstream’s core network as well as long-haul, intercity transport.”
- And, other CLECs’ arguments and evidentiary showings take for granted that CLECs have their own transport network. In addition to XO and Windstream, the comments of Level 3 and Sprint have been entirely focused on the feasibility of deploying channel terminations.



Evidence of Vibrant Competition in the Transport Market

As of 2013, for all MSAs, competitive providers had deployed transport networks for more than 95% of census blocks with special access demand.

- Even if you exclude cable HFC, competitive fiber has been deployed to 83% of these census blocks.

The record shows that the transport competition is extremely mature and extensive:

MSA Name	Unique Providers Listing Fiber Facilities in Response to 2013 Data Request
Atlanta-Sandy Springs-Roswell, GA	25
Chicago-Naperville-ELGIN, IL-IN-WI	28
Dallas-Fort Worth-Arlington, TX	25
Detroit-Warren-Dearborn, MI	16
Houston-The Woodlands-Sugar Land, TX	22
Los Angeles-Long Beach-Anaheim, CA	15
Memphis, TN-MS-AR	21
Miami-Fort Lauderdale-West Palm Beach, FL	14
St. Louis, MO-IL	22
Washington-Arlington-Alexandria, DC-VA-MD-WV	24



The 3% X-factor and 11% Total Price Cap Adjustment Are Not Supported by the Facts or the Record

- A 3% X-factor leads to irrational results:
 - Extrapolating out, this level of wired productivity would mean that the wireless and broadcasting sectors experienced little (even negative) productivity since 2005.
 - But, the BLS sector-specific labor productivity measures show that productivity in those sectors actually outpaced the wired sector.
- Assuming it is correct that the BLS KLEMS methodology would have resulted in X-factors that were too low during the 90s, there is no reason to believe that this is true today, especially given market trends since that time.
- Moreover, the 90s X-factors are not a better representation of BDS-specific productivity.
 - They estimated interstate access service productivity (and dominated by switched access).
 - Neither the 1990 nor the 1995 X-factor studies included special access, and special access made up only a small portion of 1997 study.
- It would be arbitrary to apply this adjustment only to the years which the Commission contends the X-factor was *too low* without adjusting for the years during which this methodology results in a finding that the X-factor was set *too high*.
 - 1997-2015 – the actual X-factor averaged 3.8%, but this methodology says it should have been ~3.3%.
 - This implies that now, prices are too low and a net positive price reset of ~8% is required to correct for this.



Questions?

